

**EXHIBIT C**

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555(JMP)

Case No. 08-01420(JMP)(SIPA)

Adv. Case No. 09-01258

Adv. Case No. 08-01743

Adv. Case No. 09-01242

Case No. 09-14884-jmp

- - - - -x

In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC., et al.,

Debtors.

- - - - -x

In the Matter of:

LEHMAN BROTHERS INC.,

Debtor.

- - - - -x

NEUBERGER BERMAN, LLC,

Plaintiff,

-against-

PNC BANK, NATIONAL ASSOCIATION,

LEHMAN BROTHERS INC., AND LEHMAN

BROTHERS COMMERCIAL CORPORATION,

Defendants.

- - - - -x

VERITEXT REPORTING COMPANY

1 - - - - -x

2 STATE STREET BANK AND TRUST COMPANY,

3 Plaintiff,

4 LEHMAN COMMERCIAL PAPER INC.,

5 -against-

6 Defendant.

7 - - - - -x

8 LEHMAN BROTHERS SPECIAL FINANCING INC.,

9 Plaintiff,

10 BNY CORPORATE TRUSTEE SERVICES, LTD.,

11 -against-

12 Defendant.

13 - - - - -x

14 In the Matter of:

15 LEHMAN RE LTD.,

16 Debtor.

17 - - - - -x

18 U.S. Bankruptcy Court

19 One Bowling Green

20 New York, New York

21 September 15, 2009

22 10:03 a.m.

23 B E F O R E:

24 HON. JAMES M. PECK

25 U.S. BANKRUPTCY JUDGE

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RE: CASE NOS. 08-13555(JMP) and 08-01420(JMP)(SIPA)  
HEARING re Interim Applications for Allowance of Compensation  
for Professional Services Rendered and for Reimbursement of  
Actual and Necessary Expenses [Docket No. 4839]  
  
HEARING re Motion of Wells Fargo, NA for Relief from the  
Automatic Stay [Docket No. 4640]  
  
HEARING re Motion of Wells Fargo, NA for Relief from the  
Automatic Stay [Docket No. 4671]  
  
HEARING re Motion of Washington Mutual Bank f/k/a Washington  
Mutual Bank, FA. For Relief from the Automatic Stay [Docket No.  
4759]  
  
HEARING re Motion of A/P Hotel, LLC for Relief from the  
Automatic Stay [Docket No. 4950]  
  
HEARING re Motion for Authorization to Assume an Interest Rate  
Swap with MEG Energy Corp. [Docket No. 5012]

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HEARING re Debtors' Motion for Establishment of Procedures for  
the Debtors to Transfer Their Interests in Respect of  
Residential and Commercial Loans Subject to Foreclosure to  
Wholly-Owned Non-Debtor Subsidiaries [Docket No. 4966]

HEARING re Debtors' Motion for Establishment of Procedures for  
the Debtors to Compromise Claims of the Debtors in Respect of  
Real Estate Loans [Docket No. 4942]

HEARING re Motion of Landwirtschaftliche Rentenbank for 2004  
Examination [Docket No. 4800]

HEARING re Debtors' Motion for Authorization to Implement  
Alternative Dispute Resolution Procedures for Affirmative  
Claims of Debtors Under Derivative Contracts [Docket No. 4453]

HEARING re Debtors' Motion to Compel Performance of Metavante  
Corporation's Obligations Under an Executory Contract and to  
Enforce the Automatic Stay [Docket No. 3691]

HEARING re Motion of DnB Nor Bank ASA for Allowance and Payment  
of Administrative Expense Claim and Allowing Setoff of Such  
Claim [Docket No. 4054]

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HEARING re Motion of William Kuntz, III for Review of Dismissal  
of Appeal [Docket No. 1261]

RE: ADV. CASE NO. 09-01258:  
PRE-TRIAL CONFERENCE

RE: ADV. CASE NO. 08-01743:  
PRE-TRIAL CONFERENCE

RE: ADV. CASE NO. 09-01242:  
Motion of BNY Corporate Trustee Services Limited to Stay  
Further Proceedings Pending Disposition of its Motion for Leave  
to Appeal the August 12, 2009 Order Denying BNY's Motion to  
Dismiss and any Disposition of the Merits of that Appeal

RE: CASE NO. 09-14884-jmp  
HEARING re Joint provisional liquidators' request that the  
Court grant recognition of the company's Chapter 15 case as a  
foreign main proceeding or, alternatively, as a foreign non-  
main proceeding, and award the JPLs the requested associated  
relief

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1 that it has been presented and will make some judgments as to  
2 the identity of the mediators in consultation with counsel for  
3 the debtors and for the creditors' committee who have been so  
4 active in developing these procedures.

5 I recognize that a lot of people who are in court at  
6 this moment are here for the ADR procedures, and I'm going to  
7 give people who want to leave an opportunity to leave. I'm  
8 also going to give everybody an opportunity for a break. But  
9 because of the congestion of this docket, I think I'm going to  
10 go until 1 o'clock. So let's take a break for ten minutes, and  
11 then resume, and then go until 1 o'clock and then break for  
12 lunch. We're adjourned until then.

13 MR. GRUENBERGER: Thank you, Your Honor.

14 (Recess from 12:12 p.m. to 12:28 p.m.)

15 THE COURT: Be seated please. Number 11, Metavante.

16 MR. SLACK: Your Honor, Richard Slack from Weil,  
17 Gotshal for the debtors. We're here on the debtors' motion to  
18 compel performance of Metavante Corporation. As Your Honor  
19 knows, two months ago we had argument, after fully briefing the  
20 issue. Your Honor is in receipt of letters from both  
21 Metavante's counsel and from the debtors, which I think  
22 provides the status of where we are in terms of discussions,  
23 which is, essentially, that the parties have not had  
24 substantial discussions, as the letters which are docketed  
25 state.

1           The debtors were requested to make a proposal to  
2       resolve it, which we did. We have not received a proposal from  
3       Metavante in the two months since the hearing, and Metavante  
4       has not responded to our proposal that we've made.

5           Your Honor has mentioned Metavante a couple of times  
6       today, and so Your Honor may have a plan for the conference,  
7       but it is the debtors' position that this matter should be  
8       considered and decided, at the Court's discretion, obviously.

9           THE COURT: Understood. I'm ready to rule today.

10          MR. ARNOLD: May it please the Court, mindful of that  
11       comment, I want you to know why we wrote the letter, so that  
12       you have in mind that parties do take into account the risks of  
13       not settling, and you were quite clear at the hearing on July  
14       14th that there was an opportunity for the parties to consider  
15       resolving this matter.

16          For the Court's information, neither Lehman nor its  
17       counsel have been obdurate, ornery, or in any fashion  
18       unprofessional. Our dealings have been quite, to the contrary,  
19       exceptional throughout the history of our relationships. I  
20       reached out to counsel for the debtors to explain how it is  
21       that an impending transaction which will close on October 1st  
22       would, in my judgment, have a favorable impact on the  
23       likelihood of this matter resolving consensually. That was the  
24       singular purpose for us writing the letter to the Court. We  
25       are not here today to reargue the motion. The Court heard

1 extensive oral argument. It has been well briefed. The issues  
2 have come up again in, frankly, in other instances and motions  
3 and adversary proceedings. I wanted the Court to know that it  
4 was not by design, neglect or deliberately ignoring your  
5 comments on July 14th that the settlement has not proceeded  
6 further than it has. About a week ago we received a settlement  
7 proposal. I am authorized to state by both Fidelity and  
8 Metavante that post-closing of the merged entity we expect to,  
9 and intend to, and will make a settlement proposal, but we're  
10 also mindful that it hasn't been settled, and if it is the  
11 Court's desire to rule on the matter today, we govern ourselves  
12 accordingly. I just wanted the Court to know what I've done  
13 since July 14th to try to move this matter on.

14 THE COURT: Okay. Thank you for that update.

15 MR. ARNOLD: Thank you, Your Honor.

16 THE COURT: The Metavante matter consumed the better  
17 part of an afternoon's oral argument. My best recollection is  
18 that we specially listed it on the afternoon before the July  
19 omnibus hearing. Candidly, I don't recall why it was specially  
20 listed all by itself, but it's just as well that it happened,  
21 because it took a lot of time.

22 It's correct that I encouraged the parties to attempt  
23 to resolve this consensually, and I appreciate the fact that  
24 large enterprises, particularly those that are involved in  
25 major transactions in which acquisitions are literally weeks

1 away from being consummated, may be distracted or may have  
2 other priorities. But I also believe that when I suggested  
3 that this be listed for the September 15th omnibus hearing it  
4 was with the notion that, in effect, time would be up.

5 I'm also mindful of the fact that on today's calendar  
6 a matter very similar to this, item 6, has been consensually  
7 resolved, involving the payment of fifty percent more dollars  
8 to the debtors than are at issue in this current dispute.

9 I am prepared to rule and will do so now. Recognize  
10 that what I'm about to do will take some time and will probably  
11 take us to the lunch hour. If there is anyone here who doesn't  
12 want to hear the ruling in this case I'd like you to be free to  
13 both leave, because I won't be offended, or, if at some point  
14 during my rendition of this ruling you say to yourself this is  
15 something I don't need to hear, you're also free to leave at  
16 that point.

17 LBSF requests that the Court compel Metavante to  
18 perform its obligations under that certain 1992 ISDA Master  
19 Agreement dated as of November 20, 2007, defined as the "Master  
20 Agreement". And that certain trade confirmation dated December  
21 4, 2007, defined as the "Confirmation", and together with the  
22 Master Agreement, the "Agreement".

23 The Master Agreement provides the basic terms of the  
24 parties' contractual relationship and contemplates being  
25 supplemented by trade confirmations that provide the economic

1 terms of the specific transactions agreed to by the parties.

2 Under the Master Agreement, Metavante and LBSF entered into an  
3 interest rate swap transaction, the terms of which were  
4 documented pursuant to the Confirmation.

5 LBHI is a credit support provider for LBSF's payment  
6 obligations under the Agreement.

7 Due to declining interest rates the value of LBSF's  
8 position under the Agreement has increased. As of May 2009,  
9 under the payment terms of the Agreement, Metavante owed LBSF  
10 in excess of 6 million dollars, representing quarterly payments  
11 due November, 2008, February, 2009 and May, 2009, plus default  
12 interest in excess of 300,000 dollars.

13 It is possible that due to current market conditions  
14 and to the quarterly payment schedule prescribed by the  
15 Agreement the amounts that Metavante owes to LBSF as of today  
16 are even higher than those stated in the motion. Metavante has  
17 refused to make any payments to LBSF. In fact, it has refused  
18 to perform its obligations under the Agreement, as of November  
19 3, 2008. Instead, Metavante claims that LBSF and LBHI, via the  
20 filing of their respective Chapter 11 cases, each caused an  
21 event of default under the Agreement.

22 Metavante argues that due to such events of default it  
23 has the right, but not the obligation, under the safe harbor  
24 provisions of the Bankruptcy Code, to terminate all outstanding  
25 derivative transactions under the Agreement. Metavante also



1 maintains that it is not otherwise required to perform under  
2 the Agreement.

3 The parties presented their arguments to the Court at  
4 a hearing held on July 14, 2009. Notably at the hearing  
5 counsel to Metavante stated that, quote, "the opportunity to  
6 settle the matter", is a possibility. The reference in the  
7 transcript is page 58, lines 18 to 19. The Court took the  
8 matter under advisement and suggested that it be calendared for  
9 the September 15, 2009 omnibus hearing for purposes of either a  
10 bench ruling or a status conference on any progress the parties  
11 may have made towards a resolution.

12 I want to make clear that I am proceeding with this  
13 ruling because I view the letter described by counsel for  
14 Metavante, which talked about a possible settlement  
15 counterproposal occurring sometime after the closing of a  
16 merger on October 1, as being an insufficient commitment to a  
17 timely settlement.

18 On September 14, 2009 the Court received letters from  
19 counsel to each of the parties. Counsel to Metavante requests  
20 an adjournment to October 14. Counsel states that an  
21 adjournment will facilitate the parties' settlement  
22 negotiations but explains that Metavante may not make a  
23 counterproposal to LBSF's September 5, 2009 settlement proposal  
24 until after the proposed October 1, 2009 closing of a merger.  
25 Counsel also suggests that an adjournment will allow the Court

1 to put the motion on the same track as two other motions  
2 currently pending before the Court. Which motions, counsel  
3 claims, raise similar issues to the motion? Counsel to LBSF  
4 and LBHI maintain that inasmuch as Metavante has done nothing  
5 since July 14, 2009 to settle this matter other than asking  
6 LBSF and LBHI to make a settlement proposal, the parties are no  
7 closer to settlement than they were at the hearing, and,  
8 therefore, the status conference should go forward as planned.

9 While each of the matters reference by counsel to  
10 Metavante may have overlapping issues with those presented in  
11 the current dispute, each matter involves its own distinct set  
12 of facts. Moreover, each of the two referenced matters is in  
13 its infancy. No response has been filed in either one, which  
14 may further delay resolution here.

15 This is a dispute that has been fully briefed and  
16 argued and is ripe for determination. Moreover, I note that  
17 the settlement that was achieved with MEG Energy that was  
18 referenced this morning indicates that parties who are willing  
19 to settle can, and do.

20 Under the Agreement LBSF is obligated to pay the  
21 floating three month USD LIBOR BBA interest rate on a notional  
22 amount of 600 million dollars, which notional amount declines  
23 over time, beginning in May, 2010. Metavante, in turn, is  
24 obligated to pay a fixed interest rate, 3.865 percent, on the  
25 notional amount. The Agreement is set to expire on February 1,

1 2012. The Agreement defines event of default to include the  
2 bankruptcy of any party or credit support provider. Under the  
3 terms of the Agreement, upon an event of default the non-  
4 defaulting party may designate an early termination date. Upon  
5 termination a final payment is calculated and paid in order to  
6 put the parties into the same economic position as if the  
7 termination had not occurred.

8 In the instant case Metavante has refused to perform  
9 under the Agreement on account of the event of default that has  
10 occurred, and is continuing, on account of the bankruptcies of  
11 LBSF and LBHI. Metavante has not, however, attempted to  
12 terminate the Agreement. Instead, Metavante entered into a  
13 replacement hedge covering the period from November 3, 2008  
14 through February 1, 2010.

15 LBSF and LBHI argue that the Agreement is an executory  
16 contract because material performance, specifically payment  
17 obligations, remain due by both LBSF and Metavante. Under  
18 Bankruptcy Code Section 365(a) a debtor in possession may,  
19 "subject to the court's approval, assume or reject any  
20 executory contract". The case law makes clear, however, that  
21 while a debtor determines whether to assume or reject an  
22 executory contract the counterparty to such contract must  
23 continue to perform.

24 LBSF and LBHI further argue that the safe harbor  
25 provisions do not excuse Metavante's failure to perform.

1 Indeed, the safe harbor provisions permit qualifying non-debtor  
2 counterparties to derivative contracts to exercise certain  
3 limited contractual rights triggered by, among other things, a  
4 Chapter 11 filing. They're available, however, only to the  
5 extent that a counterparty seeks to one, liquidate, terminate  
6 or accelerate its contracts or two, net out its positions. All  
7 other uses of ipso facto provisions remain unenforceable under  
8 the Bankruptcy Code.

9 Notably, Metavante does not dispute that it has failed  
10 to perform under the Agreement. Instead, Metavante argues that  
11 the occurrence of an event of default under the Agreement gives  
12 rise to its right, as the non-defaulting party, to terminate  
13 under the safe harbor provisions. According to Metavante the  
14 occurrence of an event of default does not, however, create the  
15 obligation for it to terminate under the safe harbor  
16 provisions. Metavante emphasizes the term, quote, "condition  
17 precedent" set forth in Sections 2(a), 1 and 3 of the  
18 Agreement, which subject payment obligations to the condition  
19 precedent that no event of default with respect to the party  
20 has occurred and is continuing.

21 Metavante argues that under New York State contract  
22 law a failure of a condition precedent excuses a party's  
23 obligation to perform. Metavante states that its unequivocal  
24 right to suspend payments until the termination of the  
25 Agreement is fundamental to the manner in which swap parties

1 government themselves. Metavante takes issue with LBSF and  
2 LBHI in asking the Court to treat the Agreement like a garden  
3 variety executory contract, arguing that it cannot be compelled  
4 to pay because LBSF and LBHI cannot provide the essential item  
5 of value Metavante bargained for, namely an effective  
6 counterparty.

7 Metavante further argues on information and belief  
8 that LBSF and LBHI also are in default under certain  
9 unspecified indebtedness that allegedly may have created a  
10 cross default under the Agreement, asserting, as a result, an  
11 alleged need to engage in the discovery process.

12 It is clear that the filing of bankruptcy petitions by  
13 LBHI and LBSF constitute events of default under the Agreement.  
14 Specifically, Section 5(a)(vii) of the Agreement provides that  
15 it shall constitute an event of default should a party to the  
16 Agreement or any credit support provider of such party  
17 institute a proceeding seeking a judgment of insolvency or  
18 bankruptcy, or any other relief under any bankruptcy insolvency  
19 law or similar law affecting creditors' rights.

20 Section 2(a)(i) and 3 of the Agreement, in turn,  
21 subject payment obligations to the condition precedent that no  
22 event of default with respect to the other party has occurred  
23 and is continuing. It is also clear, however, that the safe  
24 harbor provisions, primarily Bankruptcy Code Sections 560 and  
25 561, protect a non-defaulting swap counterparty's contractual

1 rights solely to liquidate, terminate or accelerate one or more  
2 swap agreements because of a condition of the kind specified in  
3 Section 365(e)(1), or to "offset or net out any termination  
4 values or payment amounts arising under or in connection with  
5 the termination, liquidation or acceleration of one or more  
6 swap agreements". That language comes from Section 560.

7 In the instant matter Metavante has attempted neither  
8 to liquidate, terminate or accelerate the Agreement, nor to  
9 offset or net out its position as a result of the events of  
10 default caused by the filing of bankruptcy petitions by LBHI  
11 and LBSF. Metavante simply is withholding performance, relying  
12 on the conditions precedent language in Sections 2(a)(i) and  
13 (iii) under the Agreement.

14 The question presented in this matter and the issue  
15 that was argued by the parties at the hearing is whether  
16 Metavante's withholding of performance is permitted, either  
17 under the safe harbor provisions or under terms of the  
18 Agreement itself. It is not.

19 Although complicated at its core the Agreement is, in  
20 fact, a garden variety executory contract, one for which there  
21 remains something still to be done on both sides. Each party  
22 to the Agreement still is obligated to make quarterly payments  
23 based on a floating or fixed interest rate of a notional  
24 amount, it being understood that the net obligor actually makes  
25 a payment after the parties respective positions are calculated

1 on a quarterly basis, in February, May, August and November of  
2 each calendar year.

3 Under relevant case law it is clear that while an un-  
4 assumed executory contract is not enforceable against a debtor,  
5 see NLRB v. Bildisco & Bildisco, 465 US 513 at 531, such a  
6 contract is enforceable by a debtor against the counterparty.  
7 See McLean Industries, Inc. v. Medical Laboratory Automation,  
8 Inc., 96 B.R. 440 at 449 (Bankr. S.D.N.Y. 1989). Metavante  
9 relies on In re Lucre, Inc., 339 BR 648 (WD Mich.) for the  
10 proposition that a debtor's uncured pre-petition breach of its  
11 executory contract, here the event of default caused by the  
12 bankruptcy filings of LBHI and LBSF, will, in and of itself,  
13 justify continued nonperformance by the non-debtor  
14 counterparty, and mere commencement of bankruptcy proceedings  
15 and the imposition of the automatic stay does not empower the  
16 debtor to compel performance from a non-debtor party.

17 The Court rejects the Lucre decision as nonbinding and  
18 non-persuasive. While Metavante's argument for the events of  
19 default caused by the bankruptcy filings of LBHI and LBSF do  
20 create an obligation for it to terminate the Agreement under  
21 the safe harbor provisions, that's a tenable argument. Its  
22 conduct of riding the market for the period of one year, while  
23 taking no action whatsoever, is simply unacceptable and  
24 contrary to the spirit of these provisions of the Bankruptcy  
25 Code.

1 First, inasmuch as the Bankruptcy Code trumps any  
2 state law excuse of nonperformance, Metavante's reliance on New  
3 York contract law is misplaced. Moreover, legislative history  
4 evidences Congress's intent to allow for the prompt closing out  
5 or liquidation of open accounts upon the commencement of a  
6 bankruptcy case. Citation is to the Congressional history of  
7 this, H.R. Rep. 97-420 at 1 (1982), as well as its stated  
8 rationale that the immediate termination for default and the  
9 netting provisions are critical aspects of swap transactions  
10 and are necessary for the protection of all parties in light of  
11 the potential for rapid changes in the financial markets.  
12 Citation to the Senate Report number 101-285 at 1 (1990).

13 The safe harbor provisions specifically permit  
14 termination solely, quote, "because of a condition of the kind  
15 specified in Section 365(e)(1) that is the insolvency or  
16 financial condition of the debtor and the commencement of a  
17 bankruptcy case. See also *In re Enron Corp.*, 2005. WL 3874285,  
18 at \*4, Judge Gonzalez's case, 2005. Noting that a  
19 counterparty's action under the safe harbor provisions must be  
20 made fairly contemporaneously with the bankruptcy filing, less  
21 the contract be rendered just another ordinary executory  
22 contract.

23 The Court finds that Metavante's window to act  
24 promptly under the safe harbor provisions has passed, and while  
25 it may not have had the obligation to terminate immediately



1 upon the filing of LBHI or LBSF, its failure to do so, at this  
2 juncture, constitutes a waiver of that right at this point.

3 Metavante's references to defaults under certain  
4 unspecified indebtedness that allegedly may have created a  
5 cross default under the Agreement are of no moment. First,  
6 Metavante failed to set forth the basis, either in its papers  
7 or at the hearing, for its information and belief that such a  
8 default may have occurred. Its assertion that such a default  
9 may have occurred indicates that Metavante is not aware of any  
10 such default, and, therefore, did not rely on that default in  
11 its refusal to perform under the Agreement or lacks knowledge  
12 of what that default may be.

13 Additionally, the argument that LBSF or LBHI may have  
14 defaulted under other specified indebtedness, as that term is  
15 defined in the Agreement, relies upon the financial condition  
16 of bankruptcy debtors to withhold performance. That is also  
17 unenforceable as an ipso facto clause that may not be enforced  
18 under the Bankruptcy Code Section 365(e)(1)(A).

19 LBSF and LBHI are entitled to continued receipt of  
20 payments under the Agreement. Metavante's attempts to control  
21 LBSF's right to receive payment under the Agreement constitute,  
22 in effect, an attempt to control property of the estate. See  
23 In re Enron Corp., 300 B.R. 201 at 212 (S.D.N.Y. 2003),  
24 recognizing that contract rights are property of the estate and  
25 that therefore those rights are protected by the automated

1 stay.

2 This is a violation of the automatic stay imposed by  
3 Code Section 362. Accordingly, for the reasons set forth in  
4 LBSF's and LBHI's papers, for the reasons stated on the record  
5 at the hearing and for the reasons stated on the record today,  
6 pursuant to Bankruptcy Code Sections 105(a), 362 and 365,  
7 Metavante is directed to perform under the Agreement until such  
8 time as LBSF and LBHI determine whether to assume or reject.  
9 That's the ruling of the Court.

10 MR. KRASNOW: Good afternoon, Your Honor. Richard  
11 Krasnow, Weil, Gotshal & Manges, for the Chapter 11 debtors.  
12 We are close to the end of this morning's agenda, but not quite  
13 there as yet. The next item, Your Honor, is number 12. It is  
14 the motion of DnB Nor Bank described in the agenda. Your  
15 Honor, that matter has been fully submitted to the Court, fully  
16 briefed, arguments held on November 5th, and today is the  
17 scheduled status conference.

18 THE COURT: Okay. I'm ready to rule on that, but  
19 given the hour I'm not going to take the time to do that now.  
20 But we'll issue a short memorandum in due course. So as to not  
21 create any undue suspense for those parties who are here in  
22 connection with the DnB Nor matter, I am deciding that in favor  
23 of the debtors and against DnB Nor, denying DnB Nor's motion  
24 for allowance of an administrative expense claim, substantially  
25 for the reasons set forth in the committee's papers.